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SUBJECT: COLOMBIA 2006 INVESTMENT CLIMATE REPORT

Openness to Foreign Investment:

¶1. The Uribe administration stepped up the economic liberalization begun in the early 1990's and is committed to an open investment regime. Liberalization has progressed furthest in telecommunications, accounting/auditing, energy, and tourism and to a lesser extent, legal services, insurance, distribution services, advertising, and data processing. Colombian law restricts the movement of personnel in several professional areas, such as architecture, engineering, law, and construction. For firms with more than ten employees, no more than 10 percent of the general workforce and 20 percent of specialists can be foreign nationals. Nevertheless, attempts are underway to liberalize areas where restrictions remain in force.

¶2. At this writing, negotiations for the US-Andean Trade Promotion Agreement (USATPA) continue. The agreement will enhance protections for U.S. investors and create new opportunities for trade and investment.

¶3. The primary regulations governing foreign investment in Colombia are Law 9 of 1991, Resolutions 51, 52, and 53 of the Council on Economic and Social Policy (CONPES) and Resolution 21 of the Board of Directors of the Central Bank. These regulations allow for free foreign investment across the Colombian economy, except in sectors related to national security and disposal of hazardous waste products. Foreign investments, in general, receive the same legal and administrative treatment as domestic investment. Foreign investments in telecommunications, financial services, and oil and mining sectors require sector-specific procedures, such as investment registration and concession agreements with the Colombian government, but are not restricted in the amount of foreign capital permitted.

¶4. Decree 1844/2003 established that the type of investment, its ultimate destination, and the type of currency regulates the registration requirements. In December 2004, the Colombian government attempted to stem speculative capital flows through a decree, although it is difficult for the GOC to enforce and the Finance Minister has publicly committed to remove it in the near future. The letter of the law says that there are consequences for expatriating portfolio investments and earnings before 12 months have passed, but does not define the penalties nor who will enforce them.

¶5. In July, 2005, the Colombian government adopted an investment stability law, Law 963. This law guarantees investors that the laws applicable to the investment at the time the investment is made will remain in effect for a period between 3 and 20 years depending on the type and amount of the investment. The minimum dollar value of the investment is USD 1.2 million and those seeking to benefit from this law are required to pay a fee based on the progress of the investment. This law benefits investments in manufacturing, agriculture, tourism, mining, petroleum, telecommunications, construction, electricity production and transmission, port and railroad development, and other activities

approved by a special committee. Portfolio investment is specifically excluded from benefiting from Law 963 and the investment stability guarantee does not include taxes, labor and social security laws, financial services laws and the tariff system.

Accounting and auditing:

¶6. Providers of accounting and auditing services must register in Colombia. No restrictions apply to services offered by consulting firms or individuals. Subsidiaries of U.S. based multinational firms currently control 80 percent of the accounting market. The signing of the USATPA will not substantially change market access in this sector as U.S. companies currently dominate the market.

Advertising:

¶7. There are no local-content advertising requirements for advertising on Colombian television, but the National Television Commission charges foreign-made ads double the national rate for airtime.

Audiovisual services:

¶8. Colombian television broadcast laws (Law 182/95 and Law 375/96) require foreign investors to be actively engaged in television operations in their country of origin. National broadcasters are required to dedicate at least 70 percent of prime time to locally produced programming. Outside of prime time, at least 50 percent of programming must be locally produced except between the hours of midnight and 10:00 am when no locally produced programming is required. These quotas are being addressed in the USATPA negotiations.

¶9. Television, radio broadcasting, movie production, and movie reproduction fall under national-treatment limits. Key regulations are Decree 2080/2000, Law 680/2001, Law 182/1995, Law 14/1991, and Law 29. Foreign investment in television network and programming companies is limited to 40 percent. Foreign operators are limited by law to 25 percent ownership of radio broadcast programs. A maximum of 10 percent foreign participation in local TV productions is allowed and the participation of foreign artists in local TV productions is dependent upon the reciprocity requirement. National TV programs can be directed by foreign directors, in which case the screen writers and starring actors must be Colombian nationals. (If the director is Colombian then some writers and/or starring actors may be foreign nationals). Bidding concessions for programming in public television channels are only open to Colombian nationals, and Colombian nationals are required to direct and manage newspapers covering domestic politics.

Data processing and information:

¶10. A legal commercial presence is required to provide this service in Colombia.

Banking

¶11. Foreign companies are permitted to own 100 percent of financial institutions in Colombia. Foreign investors are required to obtain approval from the Banking Commission before making a direct investment of ten percent or more in any one entity. Portfolio investments that will be used to acquire more than five percent of an entity also require authorization. The use of foreign personnel in financial institutions is limited to administrators, legal representatives, and technicians. The USATPA under negotiation aims to remove many of these restrictions.

¶12. Foreign banks seeking to operate in Colombia must establish a local commercial presence and comply with the same capital and other requirements as local financial institutions. Colombian legislation limits the operation of banks and other financial institutions by separating fiduciary, investment banking, commercial loans, leasing, and insurance services, from banking services. Current legislation (Law 389/1997) permits banking institutions to develop such activities in the same office/building, but the management of such services must be separate.

¶13. Since 1999, banks operating in Colombia have been subject to a minimum capital requirement because of Law 510/1999. This law grants the government the right to intervene in institutions that fail to meet these minimum performance requirements. Institutions are required to register with the Financial Institutions Guarantee Fund (FOGAFIN, FDIC-equivalent) and this law extended the terms and time to liquidate a failing bank from 6 to 18 months.

¶14. Other regulations of interest to this sector appear in Decree 2951/2004. This decree establishes that institutions must create a commercial presence if their promotions target Colombian residents. A banking relationship with a Colombian resident and a financial entity abroad is permitted if the relationship was initiated by the Colombian resident without any publicity or promotion in Colombian territory. The FTA currently under negotiation seeks to eliminate these restrictions.

¶15. As of October 2005, past-due loans accounted for 4.5 percent of the total portfolio, compared with 5.7 percent in 2004, and banks' return on equity rose to 22.6 percent as of October 2005. Provisioning for past-due loans has increased and is above the regional average because of a restructuring of the entire financial sector.

¶16. Since the 1998-99 crisis, the number of financial institutions in the country decreased from 109 to 51 in July 2005, mainly due to mergers and acquisitions and efforts provide universal banking services. In 2005, there were six mergers plus the creation of Gran Banco Bancaf. As a direct result of these mergers and acquisitions, the new institutions are expected to broaden their distribution structures and offer clients more flexible schedules and more branch offices. The financial sector as a whole is investing in new methodologies for risk assessment and portfolio management. Banks in general are being conservative, thus provisioning additional resources for past-due loans. Nevertheless, as of October 2005, the Colombian financial system had registered profits of approximately US $2.9 billion, 26 percent higher than the profits registered between January and October 2004.

¶17. Banking authorities continue to make progress in advancing the implementation of the risk-based approach for capital adequacy in line with the Basel II capital guidelines. Per IMF recommendations to improve coordination and information sharing efforts, the Banking and Securities Commissions initiated a merger process in November 2005. The merger will improve the exchange of information and allow for more effective monitoring, policymaking, and conflict resolution.

Hydrocarbons:

¶18. The Colombian government is currently seeking to increase exploration and investment. In 2003 the Colombian government separated regulatory responsibilities from Ecopetrol, the state owned oil company, to a government entity called the National Hydrocarbons Agency (ANH). The ANH administers Colombia's competitive process, allowing Ecopetrol to compete side by side with foreign firms for hydrocarbon contracts. Foreign companies may assume up to 100 percent of investment and risk activities in all exploration and production contracts. Oil companies may obtain the right to exploit fields for 30 years or until depleted, as well as extend previous association contracts.

¶19. A new sliding-scale royalty rate on oil projects establishes a 5 percent royalty rate on the smallest oil fields and an upper limit of 25 percent on larger fields. The lower royalty rate has encouraged investments by small- and medium-sized operators, since more than 80 percent of Colombia's fields contain less than 50 million barrels. The reforms have helped to renew interest in Colombia's oil exploration sector, with the government signing a record number of contracts with foreign oil companies during 2005. As of late November 2005, a total of 48 exploration, production and technical evaluation contracts had been signed between the ANH and foreign investors, and an additional 13 contracts were in process.

¶20. Between 2004 and the third quarter of 2005, Ecopetrol and its partners covered more than 7,000 Kms of seismic and drilled 37 exploratory wells. Exploration targets for 2006 are to explore an

additional 3,400 kms of seismic, drill 40 exploratory wells, and discover 250 million barrels of new oil reserves. Ecopetrol's assigned budget for exploration is approximately US $92.5 million in 2004 and US $93 million in 2005. Current oil reserves are approximately 1.47 billion barrels and are expected to last until ¶2010. In the first three quarters of 2005, Colombia exported US $4 billion worth of petroleum products, of which 71 percent or $2.8 billion went to the U.S. For 2004, Colombia exported US $4.2 billion worth of petroleum products, of which 80 percent went to the U.S.

¶21. Colombia's first venture capital fund for oil exploration and production was created in July 2005. The fund commenced operations with a capital investment of US $58 million. Key investors are Ecopetrol, financial institutions, oil exploration and production companies, and private investors. The objective of the fund is to reach $100 million in risk capital by the beginning of 2006 from both foreign and domestic investors. Fund financing will be primarily concentrated in minor fields with reserves below 50 million barrels. According to Ecopetrol, the probability of success in exploration of oil fields in Colombia is close to 20%. To make the fund more attractive, its partners have decided to include production projects, enabling faster returns on investment and diversified risk. The fund does allow financing up to 70% in exploration projects and 30% in production projects.

Insurance:

¶22. Colombia permits 100 percent foreign ownership of insurance firm subsidiaries. Firms must have a commercial presence locally to sell policies other than those for international travel or reinsurance. In addition, Colombia denies market access to foreign marine insurers. The USATPA seeks to permit trans-border trading of insurance (except for some types of insurance such as the mandatory vehicle insurance or pension insurance) and the possibility for foreign insurance and financial institutions to establish branch offices in Colombia. The U.S. and Colombia have agreed to give Colombian companies four years to restructure and adapt to the new business conditions before U.S. companies are allowed to enter the market.

Legal:

¶23. Provision of legal services is limited to those firms licensed under Colombian law. Foreign law firms can enter the market by forming joint ventures with local law firms. Legal services are under discussion in the United States - Andean Trade Promotion Agreement (USATPA) negotiations, but it is likely that a Colombian legal license and a local office will still be required to provide legal services locally.

Telecommunications:

¶24. Colombia currently permits 100 percent foreign ownership of telecommunication providers. In WTO negotiations, Colombia made fairly liberal commitments on basic telecommunications services and adopted the WTO reference paper. However, Colombia specifically prohibited "callback" services and excluded fixed and mobile satellite systems. The license or concession for the supply of telecommunications services is only granted to enterprises legally established in Colombia.

¶25. Significant barriers to entry include high license fees ($150 million for a long distance license fee), cross subsidies, commercial presence in Colombia and economic needs tests. The Telecommunications Regulatory Commission (CRT) may require an economic needs test for the approval of licenses in voice, facsimile, e-mail, and other value-added services. The parameters that determine "an economic needs test" are not clearly established in Colombian legislation. CRT also maintains a system of crossed subsidies where, for example, long-distance telephony subsidizes local telephony. Low (subsidized) prices of local telephony and high restrictive costs in the provision of long-distance telephony limit the entry of new competitors. (Prices of international long-distance calls in Colombia are 35 percent higher than the average in developing countries, while prices of local calls are 25 percent lower than the average in developing countries).

¶26. Interconnection and trunk access policies and guidelines are not transparently formulated and applied by the regulatory authority, which further limits competition for the provision of local, long-distance and mobile services. Colombia has an open mobile telecommunications market for Personal Communications Services (PCS) competition. The government issued a PCS license to new competitor Colombia Movil (Ola), effectively ending Colombia's mobile telecommunications duopoly and opening the door for competition (Telefonica and Comcel currently share approximately 80 percent of the cellular market). Colombia Movil, owned by state-run Empresa de Telecomunicaciones de Bogota (ETB) and Empresas Publicas de Medellin (EPM), received a 10-year concession to develop the market and competes against current cellular providers. The USATPA negotiations currently underway seek to further liberalize this market.

Transportation:

¶27. Article 1458 of the Commercial Code of 1971 prohibits any foreign ownership interest in commercial ships licensed in Colombia. Article 1490 of the Commercial Code restricts the percentage of FDI in maritime agencies to 30 percent, and Article 1426 restricts foreign ownership in national airline or shipping companies to 40 percent.

¶28. Trans-border transportation services are also restricted in Colombia. Land cargo transportation must be provided by natural or legal persons with commercial presence in the country and licensed by the Ministry of Transportation. Colombia's law permits international cabotage companies to provide cabotage services "only when there is no national capacity to provide the service." Cargo reserve requirements in transport have been eliminated. However, the Ministry of Foreign Trade reserves the right to impose restrictions on foreign vessels of those nations that impose reserve requirements on Colombian vessels.

Investment Screening:

¶29. The Colombian government largely eliminated investment screening, and the mechanisms that still exist are considered routine and non-discriminatory. Regulations grant national treatment to foreign and domestic direct investors alike. Some sectors still require a concession agreement from the appropriate Colombian government entity. The Colombian Economic and Social Policy Council (CONPES) reserves the right to identify sectors of economic activity where the government may or may not admit foreign capital participation.

¶30. Foreign investments must be registered with the Central Bank's foreign exchange office within three months of the transaction date to ensure repatriation of profits and remittances and to access official foreign exchange. All foreign investors, like domestic investors, must obtain a license from the Commission of Companies and register with the local Chamber of Commerce. Generally, foreign investors may participate in privatization of state-owned enterprises without restrictions. Colombia imposes the same investment restrictions on foreign investors that it does on national investors. A commercial presence in the country (defined as a registered place of business, a branch, or an agent) is a standard requirement for conducting business in Colombia. Foreign investors can participate without discrimination in government-subsidized research programs. In fact, most Colombian government research has been done in connection with foreign institutions.

Other factors which may impact investment:

¶31. Law 145/1999 provides the Colombian government with the power of "economic intervention" in the operation of all companies (public, private, local, or foreign) permanently located in Colombia. This law promotes solutions along the lines of U.S.'s "Chapter 11" bailouts for companies with financial problems which face possible liquidation or bankruptcy. Restructuring agreements impose strict regulations on companies (e.g., financial operations unrelated to the company's activity may not be performed without previous authorization from all the parties involved in the transactions.)

¶32. Since the passing of this law in December 2004, the Colombian

government intervened in 914 enterprises. These companies registered assets totaling approximately US 4.8 billion and liabilities totaling approximately US 3.4 billion and employed approximately 65,000 workers. Of all the companies intervened, 665 reached restructuring agreements, which called for restructuring of corporate governance practices and outlined a payment program to meet their obligations and avoid insolvency. The remaining companies were found bankrupt and are currently being liquidated.

Andean Community CET:

¶33. In December 2005 the Andean Community decided to postpone the consolidation of its free trade area until January 31 of 2006. This delay was due in part to the ongoing US-ATPA negotiations with Colombia, Ecuador and Peru. The Andean Community adopted a Common External Tariff through Commission Decision 370 of November 26,
¶1994. All the countries except Peru signed the Decision. The common external tariff (CET) has a four-tier structure, with 5, 10, 15 and 20 percent tariff levels, and a series of tariff deferral agreements that allow member countries to move away from the basic structure. From January 31, 2006, all member countries agreed to adopt a new CET simplified on a three-tier structure with 5, 10, and 20 percent tariff levels, according to Decision 535 of 2002. Colombia's average official tariff for 2005 was 12 percent ad-valorem. Most non-agricultural products and services (both locally produced and imported) are also subject to a 16 percent value added tax.

¶34. Colombia, Venezuela and Ecuador have a special automotive regime featuring duty free import of all automotive parts, accessories, and motor vehicles. Such products from other countries face a common external tariff of 35 percent for passenger vehicles, 15 percent for mass transit and cargo vehicles, and three percent for Completely Knocked Down (CKD) parts. The Andean auto regime of November 1999 provided for the common external tariff rates described above, and for regional content requirements included in the policy, which are to increase from the current average of 23 percent to a maximum of 34 percent by the year 2009.

¶35. On July 2, 1996, the Andean Community members adopted a common regime for access to genetic and biological resources, with the goal of promoting the conservation, development, and sustainable use of biological and genetic diversity. This remains a sensitive topic in the USATPA negotiation.

Other Regional Trade Agreements:

¶36. As noted above, Colombia is already engaged in the USATPA negotiation with Peru and Ecuador. This negotiation aims to increase market access and investor protection for U.S. companies. The Andean Trade Preferences and Drug Eradication Act (ATPDEA) retroactively renewed and built upon the expired Andean Trade Preferences Act (ATPA). ATPDEA is set to expire at the end of
¶2006.

¶37. ATPDEA provides duty-free entry of approximately 6,500 product categories from Colombia into the U.S. Previously excluded products such as vacuum-packed tuna fish, textiles and apparel now enjoy duty-free access to the U.S. market upon compliance with government requirements. The President can expand the list of included products with approval an advisory committee and concurrence from the U.S. International Trade Commission. Goods must meet a value-added requirement of 35 percent, up to 15 percent of which may be accounted for by U.S. content in terms of cost or value.

¶38. Colombia exported US $4.0 billion under ATPDEA in 2004, versus US $2.9 billion in 2003. Between January and October 2005, Colombia exported US $3.8 billion, an increase of 13 percent over the same period last year. Total Colombian exports to the U.S. were US $7.5 billion between January and October 2005. 50 percent of Colombian exports to the U.S. entered through ATPDEA between January and October of 2005. US exports have also grown by almost a billion dollars since ATPDEA entered into effect in late 2002.

¶39. Colombia also has a free trade agreement between Colombia, Mexico, and Venezuela, referred to as the G-3. Colombia has a Trade Complementarity Agreement with Chile, under which 95 percent of bilateral trade has duty-free status. The Andean Community

concluded and signed a free trade agreement with the member nations of Mercosur on 16 December 2003. Colombia is a member country of the World Trade Organization (WTO).

¶40. The Latin American Integration Association (ALADI) was partially completed by the signing of Paraguay, Uruguay and the Central American Common Market (CACM) countries (Costa Rica, Guatemala, El Salvador, and Honduras) as well as Panama, Cuba and CARICOM. Agreements negotiated with CARICOM have had limited effect and have not been fully implemented. Colombia has also negotiated five bilateral investment treaties of which only one has entered into effect (see below "Bilateral Investment Agreements" for more details). Colombia also has signed other bilateral agreements to stimulate trade and ensure most favored nation treatment with Hungary, the Czech Republic, Romania, Russia, Malaysia, Indonesia, India, China, South Korea, Algeria, Kenya, Egypt, Morocco, Israel, and the Ivory Coast. Colombia has been an active participant in the Free Trade Area of the Americas (FTAA) negotiations.

Conversion and Transfer Policies:

¶41. As of December 24, portfolio capital must remain in Colombia for at least one year. No other restrictions apply to transferring funds associated with foreign investment. Foreign investment into Colombia must be registered with the Central Bank within three months of the transaction date. The government permits full remittance of all net profits regardless of the type or amount of investment (previously limited to 100 percent of the registered capital). There are no restrictions to the expatriation of revenues generated from 1) the sale or closure of a business, 2) a reduction of investment, or 3) transfer of a portfolio. Colombian law authorizes the government to restrict remittances in the event that international reserves fall below three months' worth of imports. Reserves uninterruptedly have been consistently at least double that level for decades.

Expropriation and Compensation:

¶42. Colombian law guarantees indemnification in expropriation cases.

Dispute Settlement:

¶43. Law 315/ 1996 authorizes the inclusion of an international binding arbitration clause in contracts between foreign investors and the GOC and Decree 1818/1998 allows for alternative dispute resolution. The law allows contracting parties to agree to submit disputes to international arbitration, provided that the parties are domiciled in different countries; the place of arbitration agreed by the parties is a country other than the one where they are domiciled; the subject matter of the arbitration involves the interests of more than one country, and the dispute has a direct impact on international trade. The law allows the parties to set their own arbitration terms including location, procedures, and the nationality of rules and arbiters.

¶44. Foreign investors find the arbitration process in Colombia complex and dilatory, especially with regard to enforcement of awards. Despite Colombia's commitment to international arbitral conventions and its domestic legal framework for arbitration and resolution of disputes, foreign companies have continued to endure lengthy dispute settlement processes. Consequently, there have been cases in which foreign investors have won arbitrations, only to have the losing party seek their annulment by the Council of State, a judicial body. The Council has ruled that until it decides on such requests, arbitration awards are not final, and do not need to be paid. Colombia is a member of the New York Convention on Investment Disputes, the International Center for the Settlement of Investment Disputes (ICSID), and the Multilateral Investment Guarantee Agency (MIGA).

Performance Requirements/Incentives:

¶45. Apart from export incentives relating to the operation of special or free zones, Colombian law and/or regulations do not currently impose specific TRIMs-regulated performance requirements.

Incentives:

¶46. Based on Colombian notifications to the WTO, the WTO Committee on Subsidies identified the following Colombian programs as export subsidies: (1) Plan Vallejo and (2) the CERT program. Plan Vallejo allows duty-free entry of capital goods and materials to be used in the production of export goods. In order to qualify, the producer must show that at least 70 percent of the product produced by the newly acquired capital good is exported. In the case of raw or partially finished materials, the producer must export in value, 1.5 times that of the imported materials.

¶47. The tax reimbursement certificate (CERT) program has been frozen since 2002. The program, intended to promote non-traditional export products, provided negotiable certificates to exporters based on the level of exports. Since 2002, however, the program has not been operational, but remains on the tax books.

¶48. Faced with a revaluation of the peso that affected flower and banana exports, the Uribe Administration enacted a program to help these exporters purchase mechanisms to help them counter potential exchange risk. The program offers banana and flower exporters 200 pesos for every dollar of goods exported to the United States (current exchange rate: USD 1 = CP 2250) to purchase either options or dollars in the futures market to hedge against future exchange rate fluctuations. The eligibility period for this subsidy expired on February 28, 2005. However, in September 2005 the Minister of Agriculture announced that the government was seeking resources for continuing with this type of export subsidy in 2006.

Export credit:

¶49. The foreign trade bank (BANCOLDEX) provides funds for working capital and equipment purchases dedicated to the production of exported goods. BANCOLDEX also provides discount loan rates to foreign importers of Colombian goods.

Import Licenses:

¶50. Colombia has two import licenses. All importers are required to complete a standard import registration form known locally as the "Registro de Importacin". These forms are for record keeping/statistical purposes and are available at the Ministry of Foreign Trade. The other license applies to closely monitored, sensitive products such as precursor chemicals and weaponry.

¶51. Colombia imposes discretionary import licensing to ban imports of milk powder and poultry parts. The Colombian Government also has local purchase requirements for rice, yellow corn, white corn, and cotton. Agriculture is one of the most sensitive areas in the USATPA negotiations.

¶52. The majority of "used" goods, such as personal computers, cars, tires, and clothing, are effectively prohibited from import, and those that are allowed (e.g., used medical equipment), are subject to prior licensing. The US seeks entry of used and remanufactured goods under the USATPA.

Promotion:

¶53. PROEXPORT is the Government's foreign investment and export promotion agency. It provides information on market access and business opportunities and organizes international trade shows and missions. During the last few years, PROEXPORT has been making efforts to diversify Colombian exports, which have been traditionally concentrated in coffee, petroleum, coal and flowers. PROEXPORT is much like the United State Foreign Commercial Service in that it provides planning and training strategies for medium and small companies to overcome obstacles of exporting goods and services. There are fourteen PROEXPORT offices abroad and four commercial representatives domestically provide information about 36 different countries. These offices attend and organize events, fairs, and provide commercial guides to enter foreign markets.

Taxes:

¶54. The main types of tax incentives offered include preferential import tariffs, tax exemptions and credit or risk capital from the government. One example of a tax incentive offered by the Colombian

Government is the deductibility of income from new investments in agricultural businesses dedicated to the cultivation of fruits, anchovies, rubber, and cacao. Another deduction available is income from new investments in environmental enhancements and controls once these investments are accredited by the environmental authority. Some fiscal incentives are available for investments created to generate new employment or production in areas impacted by recent natural disasters.

¶55. Tax and fiscal incentives are often based on regional considerations. For example, border areas have certain protections because currency movements in neighboring countries can severely harm local economies. Likewise, export-oriented companies and other industrial firms are provided fiscal and tax incentives where the general reduction in tariffs have hurt their businesses. Local governments also offer special incentives, such as tax holidays, to attract industry from other areas. Most applications for fiscal incentives are made directly to the agency involved. Tax incentives do not require special application; companies need only to qualify under the rules indicated in the process of filing a tax return.

Performance Requirements:

¶56. In December 2002, Colombia accepted the WTO Committee on Subsidies and Countervailing Measures' decision to phase out all export subsidies in free trade zones by December 31, 2006. However, free trade zones and special import-export zones will maintain their special customs and foreign exchange regimes. In September 2005, the GOC presented a bill to Congress, that if approved, would impose a 25 percent income tax on free zones (lower than the normal 35 percent tax) after December 31, 2006, and would maintain the exemption on the 7 percent remittance tax for free zones in the country.

Non-Tariff Barriers:

¶57. The provision of legal services is limited to law firms licensed under Colombian law. Foreign law firms can operate in Colombia only by forming a joint venture with a Colombian law firm and operating under the licenses of the Colombian lawyers in the firm. Colombia permits 100 percent foreign ownership of insurance firm subsidiaries. Insurance companies must maintain a commercial presence in order to sell policies other than those for international travel or reinsurance. Economic needs tests are required when foreign providers of professional services operate temporarily in Colombia. Moreover, residency requirements restrict trans-border trade of certain professional services, such as accounting, bookkeeping, auditing, architecture, engineering, urban planning, and medical and dental services. For firms with more than ten employees, no more than ten percent of the general workforce and 20 percent of specialists may be foreign nationals. Companies seeking to sell information provision services must establish a commercial presence in Colombia. Foreign educational institutions must have resident status in Colombia in order to receive operational authority from the Ministry of Education. The USATPA negotiations are focusing on eliminating many of these barriers to service trade.

Standards, Testing, Labeling And Certification:

¶58. The Colombian Ministry of Foreign Trade requires specific technical standards for a variety of products. The specifications are established by the Colombian Institute of Technical Standards (ICONTEC), a private non-profit organization, which provides quality certification and technical support services. ICONTEC also serves as an Underwriters Laboratories (UL) inspection center. ICONTEC is a member of the International Standards Organization (ISO) and the International Electrotechnical Commission (IEC). Resolutions 1190 through 1194 issued by the Ministry of Economic Development eliminated mandatory compliance to technical standards on approximately 90 percent of the products previously subject to such requirements. Certificates of conformity are no longer a prerequisite for importing most products that are subject to technical standards.

¶59. According to U.S. industry, Colombian requirements for product registrations to bring new products into the market are excessive and often take as long as six to eight months to fulfill. Colombia

maintains trade-restricting requirements for listing of ingredients by percentage on pet food. In some cases, unjustified SPS measures have been implemented to restrict U.S. exports. For example, Colombia has maintained restraints on U.S. exports of cattle and beef that are not based on risk assessments or otherwise comply with WTO SPS obligations. Since December of 2003, U.S. beef has been banned in Colombia on the basis of BSE (Bovine Spongiform Encephalopathy). However, this ban continues to be enforced without adequate scientific justification.

¶60. U.S. companies retailing nutritional supplements in Colombia continue to experience problems due to the lack of legislation that establishes clear parameters for sanitary registration. Colombia does not have a specific classification for nutritional supplements, causing nutritional supplements to be registered as nourishing products or medicines. In those categories, the products must meet certain requirements that nutritional supplements don't have.

Government Procurement:

¶61. Colombia is not a signatory of the WTO Agreement on Government Procurement. The USATPA under negotiation seeks to increase transparency and guarantee national treatment for U.S. firms participating in government tenders.

¶62. The Government Procurement and Contracting Law, Law 80/93, sets guidelines for the selection of suppliers requiring the use of public tenders. To sell to the GOC, foreign firms must register with the chamber of commerce and appoint a local representative. Registration must be renewed annually and includes certification of experience, finances, technical expertise, and organization. Such statements serve to qualify and classify suppliers based on "bona fide" criteria. The registration requirements make the process particularly costly for foreign firms, who need to demonstrate a commercial presence in Colombia to participate in government procurement.

¶63. One of the main problems in the application of Law 80 is that there are exceptions, which generate uncertainty among investors. Law 80 does not apply to contracts for the exploration and exploitation of renewable or non-renewable natural resources, the commercialization of said resources, or activities performed by state companies involved in these sectors. Contracts for the exploration and exploitation of renewable and non-renewable natural resources, and all those contracts related to telecommunications, radio, and courier services are governed by special legislation. In these cases, in addition to public tenders and "direct purchase" mechanisms, the state usually selects suppliers through licensing procedures.

¶64. Law 816/2003 was enacted to promote national industries in government procurement. Law 816 mandates that all public entities adopt criteria that support national industries and grants preferential treatment to bids that incorporate Colombian goods or services. Under Law 816, national companies are given a 10 to 20 percent "bonus" in their evaluation score, and foreign companies using Colombian goods or services are given a 5 percent to 15 percent bonus. Bids without any Colombian component are scored between 5 percent and 20 percent lower than national ones. Additionally, Law 816 requires foreign suppliers without local headquarters in Colombia to obtain certification from a Colombian mission overseas that government procurement laws in the home country meet reciprocity requirements. To date, this new system, which lacks an established certification process, has proven to be a barrier against the participation of U.S. suppliers in government procurement contracts.

Investment Barriers:

¶65. Investment screening is limited and the processes are generally routine and non-discriminatory. Telecommunications, financial services, and oil and mining sectors require specific registration procedures for foreign investors but there are no restrictions to the amount of foreign capital that may be invested in these sectors.

¶66. Some large U.S. companies have expressed concern over certain

rulings on anti-trust and competition issues by the Commission of Industry and Commerce (SIC). There are few opportunities to appeal these decisions, and the legal procedures are time consuming and costly.

¶67. As a result of a 2004 decree restricting short-term capital flows, all foreign investment must be registered with the Central Bank's foreign exchange office within three months to ensure the right to repatriate profits and remittances. All investors, foreign and national, must obtain a license from the Superintendent of Companies and register their interest in a business with the local chamber of commerce.

Tariff Barriers:

¶68. Many customs duties and most non-tariff barriers have been eliminated. The ATPA will dismantle the remaining barriers immediately upon entry into force, or after a brief transition period. Current duties have been consolidated into three tariff levels:
-- Level 1 - 0 to 5 percent for capital goods, industrial goods and raw materials not produced in Colombia,
-- Level 2 - 10 percent on manufactured goods with some exemptions,
-- Level 3 - 15 to 20 percent on consumer and "sensitive" goods, where international prices surpass the price-band ceiling, tariffs are reduced; when prices drop below the price-band floor, tariffs are raised. The price-band has affected local competitiveness and has dampened consumption via higher local prices. Andean Community variable duties have become an important barrier to imports of U.S. products into Colombia, but should be eliminated or mitigated in the USATPA. Processed food imports from Chile and country members of the Andean Community (Peru, Ecuador, Bolivia, Venezuela) enter duty-free.

¶69. Colombia assesses a discriminatory value-added tax (VAT) of 35 percent on whiskey aged for less than 12 years, which is more characteristic of U.S. whiskey, compared to a rate of 20 percent for whiskey aged for 12 or more years, most of which comes from Europe.

Right To Private Ownership And Establishment:

¶70. Colombia's Constitution explicitly protects individual rights against state actions and upholds the right to private property.
Protection of Property Rights:

¶71. Colombia has been on the Special 301 "Watch List" every year since 1991. Key concerns include lax customs enforcement and the inability to conclude legal cases against traffickers or counterfeiters. Colombia, a WTO member, has ratified legislation to meet its obligations under the Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property Rights. Colombia is a member of the World Intellectual Property Organization (WIPO), the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Treaty on the International Registration of Audiovisual Works, and the 1978 Union for the Protection of New Plant Varieties, and a signatory to the Patent Cooperation Treaty. Further IPR protections will be an integral part of the ATPA. The USG is working with Colombia to improve enforcement and prosecution of IPR-related matters.

¶72. In Colombia, the granting, registration, and administration of intellectual property rights (industrial property and copyright) are carried out by four different government entities. Colombia currently lacks a unified IPR registration system. The Commission of Industry and Commerce (SIC) acts as the Colombian patent and trademark office. The Colombian Agricultural Institute (ICA) is in charge of the issuance of plant variety protection-related and agro-chemical patents. The Ministry of Social Protection is in charge of the issuance of phamaceutical patents, while the Ministry of Justice is in charge of the issuance of literary copyrights. Each of these entities suffers from significant financial and technical resource constraints. Moreover, the lack of uniformity and consistency in IPR registration and oversight procedures limits the transparency and predictability of the IPR enforcement regime.
The USATPA will strengthen and modernize Colombia's IP regime. Key

areas are increased enforcement, stronger patent and data protection, and more modern trademark and copyright regimes.

Patents and Trademarks:

¶73. Colombia is a member of the Inter-American Convention for Trademark and Commercial Protection. Enforcement of trademark legislation in Colombia is showing some progress, but contraband and counterfeiting are widespread. The Commission of Industry and Commerce acts as the local patent and trademark office in Colombia. This agency was given the control of the government's IPR policy. However, the agency suffers from inadequate financing and personnel, having only 16 patent examiners for the whole country. The staff has a high turnover rate, resulting in a large backlog of trademark and patent applications. This has led to a large number of appeals. The patent office at the Commission believes that the number of new patent and trademark applications (currently 1,600 patent and 15,000 trademark requests per year) will double in the next two or three years, without considering the increase in applications that the signing of the USATPA with the U.S. would likely produce.

Copyrights:

¶74. Andean Community Decision 351 on the protection of copyrights has been in effect in Colombia since January 1, 1994. Law 44/1993 extends protection for computer software to 50 years but does not classify it as a literary work. Law 44 and Colombia's civil code include some provisions for IPR enforcement and have been used to combat infringement and protect rights. Colombia is a member of the Berne and Universal Copyright Conventions, the Buenos Aires and Washington Conventions, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, the Geneva Convention for Phonograms, the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty. It is not a member of the Brussels Convention relating to the Distribution of Program-Carrying Signals Transmitted by Satellite.

¶75. Colombia's Criminal Code of 2001 includes copyright infringement as a crime, and significantly increased jail terms for violators from three to five years. The code also contains provisions regarding the violation of technological protection measures and rights management information, both key obligations of the WIPO treaty. Colombia has also created a Special Investigative Unit within the Prosecutor General's Office dedicated to intellectual property rights issues. This unit began functioning in November 1999 and has 60 cases under investigation on different issues including usurped trademarks, counterfeit pharmaceuticals, pirated books, CD's, and movies, violations to industrial secrecy, and cases against pirate television programming broadcasters.

¶76. The International Intellectual Property Alliance (IIPA) estimates that, in 2004, piracy levels in Colombia for recorded music reached 71 percent with damages to U.S. industry estimated at US $51.6 million. Motion picture piracy captured 75 percent of the market and losses were valued to be around US $40 million. According to the Business Software Alliance (BSA), piracy of business software in 2004 resulted in losses for legitimate industry in Colombia of close to US $81 million. Estimated damage to U.S. industry due to book piracy was US $6 million in 2004, according to IIPA. Efforts to combat piracy through raids and other enforcement measures are hindered by a judicial system that fails to actively prosecute cases or issue deterrent criminal sentences. Border enforcement, another facet to piracy, is also weak.

¶77. Concerns about television piracy have decreased due to a relative successful licensing and inspections carried out by the Colombian National Television Commission (CNTV). However, MPAA reports that there is increasing concern about the continued growth of optical disc piracy in Colombia. The video piracy rate in the VHS format caused some audiovisual producers to simply abandon the VHS market. MPAA member companies returned to the market as increased purchases of DVD hardware players drove demand for DVDs. However, optical disc piracy has grown considerably and threatens the new legitimate DVD market.

Transparency of the Regulatory System:

¶78. Colombian legal and regulatory systems are generally transparent and consistent with international norms. Colombia's civil codes define commercial entities' legal rights and outline enforcement procedures regarding commercial activities. Enforcement mechanisms exist, but historically the judicial system has not taken an active role in adjudicating commercial cases. The 1991 Constitution provided the judiciary with greater administrative and financial independence from the executive branch, and Colombian courts have tended to behave more independently and unpredictably ever since. The Colombian judicial system continues to be clogged and cumbersome.

¶79. In 2004, Colombia began moving to an oral accusatory system. The legal reforms seek to reduce impunity by making criminal investigations and trials more efficient. The new system separates the investigative functions assigned to the Office of the Attorney General from trial functions.

¶80. The U.S. Department of Justice has provided US $80 million dollars under the Justice Sector Reform Program (JSRP) to assist Colombia in the design and implementation of the criminal judicial system reforms. More than 2,400 human rights prosecutors and technical experts have been trained and state of the art criminal forensic equipment has been provided to support their investigations. In addition, more than 3,500 prosecutors, police investigators and judges have been trained on the criminal judicial system reform, with more than 14,000 to be trained by 2006 with U.S. Government assistance.

Efficient Capital Markets and Portfolio Investment:

¶81. Following the crisis of 1999, bailouts for failing banks were partially financed through a controversial tax on financial transactions. The tax was originally set at 2 percent but has since been increased to 4 percent for the period beginning in 2004 and ending in 2007. The tax on financial transactions is applied to all withdrawals from checking and savings accounts, including accounts with the Central Bank. Savings accounts for the purchase of low-income housing, transactions on the inter-bank market, and the sale or purchase of foreign currency are exempt from the tax. Electronic securities transactions, including stock market transactions are also exempt from the tax.

Related Party Transactions:

¶82. Decree 663 stipulates that the financial institution's board of directors must unanimously approve loans to a financial institution's principal officers, their relatives or shareholders with a five percent or greater stake. Loans to related parties (except those made to employees as part of health, housing, education, or similar programs) must not be offered at terms more attractive than those offered to non-related parties. Financial institutions are prohibited from making loans to broker-dealer, fiduciary, and pension fund management subsidiaries.

Stocks and Bonds:

¶83. The Colombian securities market is small but has enjoyed high growth in recent years. Only the largest of Colombia's companies participate in the local stock or bond markets, with the majority meeting their financing needs through the banking system, by reinvesting their profits, and through suppliers' credit. Institutional investors, particularly the private pension funds that mobilize the largest share of national savings (accounting for 9% of GDP), concentrate their holdings in government paper and AAA-rated commercial paper. The government also envisions revising the regulation of private pension funds to allow them to participate more actively in the capital markets. The Colombian Securities Commission and Exchange oversees the exchange, regulates market intermediaries, broker's fees, and the financial disclosure of listed companies.

¶84. In 2005, the government sought to design and implement a new set of policies and reforms to channel savings towards productive investment. Law 964/2005 regulates public markets and authorizes the Colombian Securities and Exchange Commission (SEC) to regulate the development of capital markets. The fifth chapter of the law,

Investors' Protection, addresses some of the most pressing corporate governance issues faced by Colombian business owners. Key components of the chapter include regulations regarding the composition of boards of directors, the interests of minority shareholders, disclosure of shareholders' agreements, audit committees, and participation levels of independent board members.

¶85. The second set of reforms includes a restructuring of the commissioning bodies that govern the entire financial sector. Reforms should update the operational regulations to meet international standards and strengthen enforcement. Adoption of these standards along with the consolidation of the commissions should be complete by mid-2006.

Political Violence:

¶86. The U.S. Secretary of State has designated three Colombian groups, the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC), as Foreign Terrorist Organizations. These groups have carried out bombings and other attacks in and around major urban areas, including against civilian targets. In addition, the United States designated the FARC and the AUC as significant foreign narcotics traffickers under the Kingpin Act. Terrorist groups have also targeted critical infrastructure (water, oil, gas, and electricity), public recreational areas, and modes of transportation.

¶87. President Uribe has introduced measures to restore law and order, intensifying the offensive against guerrilla groups in order to weaken them militarily and force them into political negotiations. This has put the guerrilla groups on the defensive, forcing them to retreat to their jungle strongholds during 2003-04. Fortunately, the number of civilian casualties in rural areas associated with the conflict has decreased. Security in the main urban areas has also as security forces root out of most urban militia groups. Despite these efforts, evaluations of the FARC, which is financed by narcotics trafficking, have not demonstrated significantly weakened military strength. Military deaths totaled the following for each respective year: 684 in 2002, 605 in 2003, and 589 in 2004. Military personnel killed between January and November of 2005 total 617. According to the CUT, one of Colombia's leading labor unions, approximately 300 union members and leaders were threatened with death, displaced, or killed between January and October 31, 2005. Although 2005 is the year with the lowest number of kidnappings in the last decade, and around half that of last year (730 as of November 2005), there are still 5,491 kidnapped persons in the country according to Fondolibertad and Pais Libre foundations. 1999 was the most violent year with 3,328 kidnappings. Since then the number of kidnappings has steadily declined to 1,440 cases in 2004. Piracy, another crime associated with armed insurgent groups, also decreased from 1,582 cases in 2003 to 928 in 2004. The number of piracy cases as of November 2005 was 642, according to the Ministry of Defense. According to the same source, the total number of terrorist acts has significantly decreased since 2002: dropping from 1,645 in 2002, to 1,257 in 2003, 724 in 2004 and 552 as of November 2005.

¶88. The demobilization of paramilitary groups has begun through the government's passage of the Peace and Justice Bill in June 2005. Over 16,000 combatants, mostly AUC, have demobilized so far. While narcotics and guerrilla-related violence account for part of the country's violence, common criminals are responsible for an estimated 75 percent of the reported murders.

Corruption:

¶89. The government's Comptroller General estimates that corrupt activity drains $6 million per year from Colombia's economy.

¶90. "Transparencia por Colombia", the local chapter of Transparency International (TI), has implemented a number of anti-corruption programs including: an ethics program, an entrepreneurial program and ethics program in an effort to reverse these trends. The ethics program seeks to develop a managerial development tool for small and medium enterprises to promote ethical practices and transparency. The entrepreneurial program seeks to build methodologies for the effective implementation of ethics strategies

via leadership, entrepreneurial ethics training and the creation of reporting and consulting systems. A program entitled Integrity Islands, consisting of curtailing and preventing corruption risks in specific organizational processes.

¶91. USAID has also sponsored several anti corruption programs in Colombia. The current USAID-funded anti-corruption project is a three-year, $8 million contract aimed at increasing transparency, efficiency, and public management within Colombia's government institutions at the national, departmental, and municipal levels as well as more fully engaging citizens as partners in overseeing the performance of their government.

Bilateral Investment Agreements:

¶92. Colombia has negotiated and signed five bilateral investment treaties: Cuba (1994), Great Britain (1994), Peru (1994), Spain (1995), and Chile (2000). Of these, only that with Peru has entered into effect. The agreement with Chile has not been ratified by the Chilean Congress. The other three have not entered into effect because the Colombian Constitutional Court declared certain provisions relating to expropriation unenforceable. Colombia is currently negotiating other bilateral investment treaties with Italy, France, Canada, China, Switzerland, Germany, Netherlands and Japan. A key aspect of the FTA under negotiation is the inclusion of all the obligations of a BIT in the Investment chapter.

OPIC and Other Investment Insurance Programs:

¶93. In Colombia, OPIC maintains a portfolio of US $1.7 billion. More than 3,137 jobs and close to US $1 billion in government revenues are expected to result from current OPIC-supported projects. Examples of the type and scale of investment projects handled by OPIC in Colombia include construction of power plants, natural gas pipelines, and gold mining operations. OPIC joined Chase Manhattan Bank and other lending institutions to support K & M Engineering and Consulting Corporation in the Mamonal project (now owned by KMR Power Corporation), a natural gas-fired generation facility being built in Cartagena. This project received $35 million in OPIC financing and more than US $56 million in political risk insurance. Other examples of projects currently supported are two Citibank projects on financial and telecommunication services worth more than US $67.4 million in insurance, a Chase Manhattan Bank telecommunications project with US $200 million in insurance, one Energy Initiatives Inc. gas-fired power generation project worth US $150 million, and another gas-fired power generation project by Los Amigos Leasing Company, Ltd. worth US $200 million. In September 2002, OPIC's board approved a US $200 million loan guaranty for Citibank to establish a lending facility for Latin America, with initial focus on Colombia, Bolivia, Ecuador, Paraguay, Peru and Uruguay. In June 2003, OPIC provided a US $2.2 million loan to Etek International Corporation for the establishment of security network management and monitoring infrastructure in Colombia and other Latin American countries (Argentina, Brazil, and Chile).

Foreign Trade Zones/Free Ports:

¶94. The Colombian government provides incentives for importers of capital goods using a number of drawback and duty deferral programs. Examples of these programs are the "free trade zones" and "special import-export systems" located throughout the country. Using these zones provides importers with duty-free entrance of capital goods and materials to be used in production of export goods. The Colombian government regards duty-free zones as poles of industrial, commercial, tourist and technological development, focused largely on overseas markets. There are currently 12 duty-free zones in Colombia, where more than 350 companies operate, generating exports of approximately US $1.5 billion annually. The state does not participate in the operation of duty-free zones, but there are special tariffs established for duty-free zone that finance operations. Most companies operating in duty-free zones manage operations with large-scale production and a high degree of labor specialization.

¶95. Foreign capital investments in duty-free zones are entitled to unrestricted repatriation of capital and profits. Investors are exempt from paying sales tax from the sale of goods and services on

the official exchange market, and from income and remittance taxes related to foreign sales. Goods traded within duty-free zones are considered outside of Colombian territory for import-export tariff purposes. Colombia has made commitments to abide by the provisions of the GATT Subsidies Code by phasing out any inconsistent export subsidies, including the import-export system for machinery and the free trade zones. In compliance with WTO standards, as of January 2007, several of the free trade zone tax benefits will be eliminated. A 25 percent income tax on businesses operating in free zones (lower than the usual 35 percent tax) will be imposed after December 31, 2006. Businesses operating in the free trade zones would maintain their exemption from the 7 percent remittance tax, tariffs and the value-added tax. Foreign currency exchange will remain unrestricted, and additional benefits for commitments to comply with environmental and technologic standards are being studied.

Foreign Direct Investment Statistics:

¶96. Total FDI is expected to reach US $4 billion in 2005. In 2004, the United States, followed by Spain, Panama and Venezuela ranked as Colombia's largest investor. The United States has been the main foreign investor in Colombia since 1999. In 2004, U.S. investment in Colombia reached US $874.2 million, representing 43 percent of total FDI that year, while the stock of U.S. investment in Colombia between 1994 and 2004 amounted to approximately US $4.3 billion according to Proexport/Coinvertir. U.S. FDI in Colombia is primarily in the manufacturing, mining and wholesale sectors.

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